

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HUAWEI TECHNOLOGIES CO. LTD.,

Plaintiff,

v.

**T-MOBILE US, INC. and
T-MOBILE USA, INC.,**

Defendants,

**NOKIA SOLUTIONS AND NETWORKS
US LLC, NOKIA SOLUTIONS AND
NETWORKS OY,
TELEFONAKTIEBOLAGET LM
ERICSSON, and ERICSSON INC.**

Intervenors.

Civil Action Nos. 2:16-cv-00052-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF HUAWEI TECHNOLOGIES CO. LTD'S MOTION TO STRIKE
DEFENDANTS' AND INTERVENORS' IMPROPER LETTER BRIEF**

Plaintiff Huawei Technologies Co. Ltd. ("Huawei") respectfully moves the Court to strike Docket No. 401, titled "Defendants' and Intervenors' Opposition to Huawei's Letter Motion to Maintain Privilege Over Clawed-Back Documents."

As an initial matter, this pleading is not an "opposition" because Huawei never filed a motion. At T-Mobile's urging, the Court ordered Huawei to "submit as soon as practicable but no later than September 18, 2017, all communications (in English or that have been translated into English) that were clawed back on September 10, 2017, for in camera review." (Dkt. 392). Huawei made this submission on September 15, 2017. The Court's Order did not state that

Huawei should file a motion. To the contrary, the Discovery Order states that the party challenging a privilege claim (here, T-Mobile) shall be the party to file a motion. (Dkt. 90, ¶ 6).¹ T-Mobile never did so.

In the parties' meet and confer, T-Mobile suggested that Huawei's cover letter was a "motion," but that was not Huawei's intent. Huawei provided the Court with a one-page cover letter to orient the Court to the documents it was submitting, and it served a copy of the letter on T-Mobile. The letter was not a legal brief; it did not cite to any legal authority or make any legal arguments. T-Mobile's "opposition," by contrast, is a nine-page legal brief that raises various issues for the first time, including (for example) whether privilege applies under Chinese law. If the Court is going to address these legal issues, it should do via duly-noticed motion. *See, e.g.,* Fed. R. Civ. P. 44.1.²

T-Mobile's filing is more properly characterized as a letter brief regarding Huawei's privileged documents. This Court's Standing Order Regarding Submission of Letter Briefs is clear that such submissions are only proper where the Court has requested such a brief. Here, the Court extended no such invitation to Defendants.

Because Docket 401 is an improper filing, the Court should strike it.

///

///

///

¹ The Discovery Order also states that "Inadvertent disclosures of material protected by the attorney-client privilege or the work product doctrine shall be handled in accordance with Federal Rule of Evidence 502 and Federal Rule of Civil Procedure 26(b)(3) and (5)." (Dkt. 90, ¶ 5(h).)

² To the extent the Court determines that Huawei has filed a "motion," Huawei withdraws it.

Dated: September 19, 2017

Respectfully submitted,

By: /s/ Jonathan J. Lamberson

Ruffin Cordell

Texas Bar No. 04820550

cordell@fr.com

FISH & RICHARDSON P.C.

1425 K Street, N.W., 11th Floor

Washington, D.C. 20005

Telephone: (202) 783-5070

Facsimile: (202) 783-2331

Thomas H. Reger II

Texas Bar No. 24032992

reger@fr.com

Carl E. Bruce

Texas Bar No. 24036278

bruce@fr.com

David B. Conrad

Texas Bar No. 24049042

conrad@fr.com

Jane Du

Texas Bar No. 24076355

du@fr.com

FISH & RICHARDSON P.C.

1717 Main Street, Suite 5000

Dallas, TX 75201

Telephone: (214) 747-5070

Facsimile: (214) 747-2091

David Barkan

California Bar No. 160825

barkan@fr.com

Jonathan J. Lamberson

California Bar No. 239107

lamberson@fr.com

FISH & RICHARDSON P.C.

500 Arguello Street, Suite 500

Redwood City, CA 94063

Telephone: (650) 839-5070

Facsimile: (650) 839-5071

Kevin Su
Massachusetts Bar No. 663726
su@fr.com
FISH & RICHARDSON P.C.
One Marina Park Drive
Boston, MA 02210
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

**COUNSEL FOR PLAINTIFF HUAWEI
TECHNOLOGIES CO. LTD.**

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), counsel for movant Huawei Technologies Co. Ltd, contacted counsel for Defendants T-Mobile US, Inc. and T-Mobile USA, Inc., and Intervenors, Nokia Solutions and Networks US LLC, Nokia Solutions and Networks Oy, Telefonaktiebolaget LM Ericsson, and Ericsson Inc., and was informed they oppose Huawei's Motion to Strike Defendants' and Intervenors' Improper Letter Brief.

Dated: September 19, 2017

/s/ Jonathan J. Lamberson
Jonathan J. Lamberson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been served on September 19, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jonathan J. Lamberson
Jonathan J. Lamberson